

Theresa M. Gillis (TG-2036)  
JONES DAY  
222 East 41st Street  
New York, NY 10017  
212-326-3939

*Attorneys for Defendant  
The Timken Company*

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----	x	
GEORGE EDWARD McCAIN,	)	
	)	
Plaintiff,	)	
	)	
-against -	)	<b>Civil Action No. 07-CV-5729 (JSR)</b>
	)	
RAHAL LETTERMAN RACING LLC, at al.	)	
	)	
Defendants.	)	
-----	x	

**DECLARATION OF SCOTT A. SCHERFF IN SUPPORT OF  
DEFENDANT THE TIMKEN COMPANY'S MOTION TO DISMISS**

I, Scott A. Scherff hereby declare as follows:

1. I make this Declaration in support of defendant The Timken Company's Motion to Dismiss. The statements made in this Declaration are based on my own personal knowledge and on information that I believe to be true and correct following a reasonable investigation of the books and records of The Timken Company and discussions with employees. If called as a witness, I could and would testify competently to the following facts.

2. I am Assistant General Counsel and Corporate Secretary of The Timken Company. The Timken Company is a corporation organized and existing under the laws of the State of Ohio with its principal place of business at 1835 Dueber Avenue S.W., Canton, Ohio 44706.

3. The Timken Company manufactures friction management and power transmission products, principally anti-friction bearings and specialty steels, which are sold throughout the United States and the world. Among The Timken Company's products are high-performance bearings used in racing cars. As part of its promotional efforts and to showcase its products, The Timken Company, through its Timken Motorsports program, sponsors racing teams and affiliated drivers. In 2005, with Rahal Letterman Racing LLC, The Timken Company sponsored race car driver Danica Patrick, among others.

4. The Complaint alleges that The Timken Company "reproduced without Plaintiff's permission one of the Photographs" on which Plaintiff claims to own a copyright "on so-called 'hero cards' for Timken, which were distributed to the public by Timken in 2005. (See Exhibit 29)." The Timken Company did not create or reproduce the "hero card" attached as Exhibit 29 to the Complaint. Based upon my investigation, The Timken Company received at least one, and based on past custom and practice may have received up to approximately fifty, "hero cards" such as Exhibit 29 from Rahal Letterman Racing LLC. Based on past custom and practice, if The Timken Company received multiple copies of the "hero card" at issue, the cards would have been distributed without charge to employees and customers in the United States. My investigation has not identified any instance in which The Timken Company distributed such a "hero card" in the State of New York.

5. I am aware that The Timken Company's products reach the State of New York. Such products are sold through a wholly-owned subsidiary, The Timken Corporation, an Ohio corporation with its principal place of business in Canton, Ohio, and through distributors, who are independent contractors.

6. The Timken Company has no offices or employees in the State of New York.

7. The Timken Company does not own or lease any plant, real property or equipment in the State of New York.

8. The Timken Company does not maintain any bank accounts in the State of New York.

9. The Timken Company is not registered to do business in the State of New York and has no agent for service of process in the State of New York.

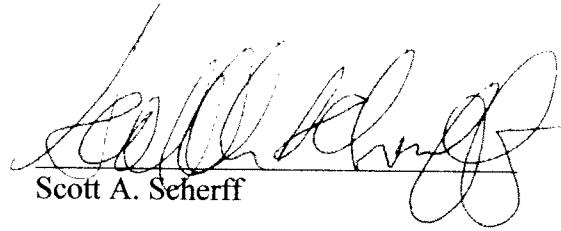
10. The Timken Company does not have any telephone listings in the State of New York.

11. The Timken Company did not pay New York State taxes in 2004, 2005 or 2006.

I declare, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

Date:

July 31, 2007



Scott A. Scherff

### CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *DECLARATION OF SCOTT A. SCHERFF* in support of *DEFENDANT THE TIMKEN COMPANY'S MEMORANDUM IN SUPPORT OF ITS MOTION TO DISMISS* was served on July 31, 2007, by electronic filing on all parties so registered and via overnight courier as set forth below:

<p>John Anthony Pelosi (JAP-9066) PELOSI, WOLF, EFFRON &amp; SPATES, LLP Woolworth Building, 233 Broadway 22<sup>nd</sup> Floor New York, New York 10279</p> <p><i>Counsel for Plaintiff George Edward McCain</i></p>	<p>Richard E. Haftel HAFTEL &amp; SILVERMAN, P.C. 260 Madison Avenue, 18th Floor New York, NY 10016</p> <p>David J. Pasternak John W. Patton, Jr. PASTERNAK, PASTERNAK &amp; PATTON A Law Corporation 1875 Century Park East, Suite 2200 Los Angeles, CA 90067</p> <p>H. Ritchey Hollenbaugh CARLILE PATCHEN AND MURPHY, LLP 366 East Broad Street Columbus, OH 43215</p> <p><i>Counsel for Defendant Rahal Letterman Racing LLC and Bobby Rahal Automotive Group</i></p>
<p>Andrew B. Lachow Deputy General Counsel Time, Inc. Time &amp; Life Building 1271 Avenue of the Americas New York, New York 10020-1393</p> <p><i>Counsel for Defendants Time, Inc. d/b/a Sports Illustrated &amp; People Magazine</i></p>	<p>Karen Bekker Mark Fowler SATTERLEE STEPHENS BURKE &amp; BURKE LLP 230 Park Avenue New York, NY 10169</p> <p><i>Counsel for Defendant Gannett Co., Inc. d/b/a USA Today</i></p>

<p>H. Rowan Gaither, IV Reema S. Abdelhamid RICHARDS KIBBE &amp; ORBE, LLP One World Financial Center New York, New York 10281-2702</p> <p>Michael H. Gottschlich BARNES &amp; THORNBURG LLP 11 South Meridian Street Indianapolis, Indiana 46204-3535</p> <p><i>Counsel for Defendant Table Moose Media LLC d/b/a Indy Men's Magazine</i></p>	<p>Margaret A. Dale PROSKAUER ROSE LLP 1585 Broadway New York, New York 10036-8299</p> <p><i>Counsel for Defendant American Honda Motor Co., Inc.</i></p>
<p>George Cacoulidis Attorney at Law 590 Madison Avenue 21st Floor New York, New York 10022</p> <p><i>Counsel for Defendant American LeMans Series LLC</i></p>	<p>Jason M. Gonder MILBANK, TWEED, HADLEY &amp; MCCLOY LLP One Chase Manhattan Plaza New York, New York</p> <p><i>Counsel for Defendant BEA Systems, Inc.</i></p>
<p>James Rosenfeld DAVIS, WRIGHT, TERMAINE LLP 1633 Broadway New York, New York 10019-6708</p> <p><i>Counsel for Defendant Gawker Media LLC</i></p>	<p>Richard Sotot HUNTON &amp; WILLIAMS LLP 20 Park Avenue New York, New York 10166-0136</p> <p><i>Counsel for Defendant Times Publishing Company d/b/a St. Petersburg Times</i></p>

	<p>Carl E. Person Carl E. Person - An Individual Practitioner 325 W. 45th St. - Suite 201 New York, NY 10036</p> <p><i>Counsel for Defendant</i> <i>Ellen Emerson d/b/a Hondabeat.com</i></p>
--	---

/s/Theresa M. Gillis  
Theresa M. Gillis (TG-2036)

Dated: New York, New York  
July 31, 2007